

In re Patent Application of  
**GRIFFIN**  
Serial No. 10/784,858  
Filed: **FEBRUARY 23, 2004**

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**REMARKS**

Applicant thanks the Examiner for the careful and thorough examination of the present application. In order to advance prosecution, Independent Claims 1, 10, 17, and 23 have been amended to recite that an initial portion of non-real time subscription data is provided to users on respective mobile cellular communications devices via said at least one cellular base station when the determined available capacity thereof is greater than a low capacity threshold, and to thereafter provide a remaining portion of the non-real time subscription data when the determined available capacity thereof is greater than a high capacity threshold greater than the low capacity threshold. Support for this amendment may be found in paragraph 0033 of Applicant's Specification, for example. Additionally, the recitation of discontinuing subscription data to respective mobile devices based on initiation of a telephone call has been deleted from Independent Claims 1, 17, and 23, and this subject matter (which was originally included in Claims 3, 19, and 25, previously canceled) respectively, has been added as new Claims 31, 32, and 33 respectively. No new matter is being added.

**I. The Claimed Invention**

The invention is directed to a cellular communications system. In particular, amended independent Claim 1, for example, recites a cellular communications system including a plurality of mobile cellular communications

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devices each associated with a respective user, and a cellular base station for wirelessly communicating with the plurality of mobile cellular communications devices. The cellular base station has a capacity associated therewith. The cellular communications system also includes a central station for determining available capacity of the cellular base station based upon active wireless communications with the mobile cellular communications devices.

The cellular communications system further includes a subscription server for cooperating with the central station to provide an initial portion of non-real time subscription data to users on respective mobile cellular communications devices via said at least one cellular base station when the determined available capacity thereof is greater than a low capacity threshold, and to thereafter provide a remaining portion of the non-real time subscription data to users on respective mobile cellular communications devices via the cellular base station when the determined available capacity thereof is greater than a high capacity threshold greater than the low capacity threshold.

Amended independent Claim 10 is directed to a similar cellular communications system and further recites the subscription server cooperating with said central station to discontinue providing subscription data based upon the determined available capacity falling below the threshold, and an initiation of a telephone call corresponding to a respective mobile cellular communications device receiving non-real time subscription data.

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Amended independent Claim 17 is directed to a related subscription server. Amended independent Claim 23 is directed to a related method. Independent Claims 10, 17, and 23 have been amended similar to amended independent Claim 1.

## **II. The Claims are Patentable**

The Examiner rejected the independent claims as being obvious over a three-way combination of Aarnio in view of Dolwin, in further view of Fry. Aarnio is directed to a system for providing on-line subscription services from a subscription server to a user of a mobile terminal through the Internet. The subscription server receives from the mobile terminal user-specific information relating to the user's mobile terminal capabilities, the user's preferences of products, and the user's financial information. The subscription server sends to the mobile terminal locally or remotely retrieved information related to a product based on the user-specific information. The subscription server receives from the mobile terminal a request indicating whether the user wishes to either cancel or purchase the product. The subscription server cancels the product when the user so indicates, and downloads the product to the mobile terminal when the user desires to purchase the product. (See, e.g., paragraph 0009-0015 of Aarnio). The Examiner correctly recognized that Aarnio is silent as to when the determined available capacity of the wireless base station is greater than a threshold.

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The Examiner then turned to Dolwin for this deficiency. Dolwin is directed to a mobile phone network including an operation and maintenance center (OMC) for collecting statistics from base stations to determine the extent of an available network capacity being used throughout a day. Upon identifying a time of low traffic capacity, streamed media data may be sent to a mobile communications device at that time over the mobile phone network. (See paragraph 0013 of Dolwin).

The Examiner properly recognized that even a selective combination of Aarnio and Dolwin fails to teach a subscription server cooperating with the central station to discontinue providing subscription data to the respective mobile cellular communication devices based upon an initiation of a telephone call. The Examiner cited to Fry to supply the noted deficiency.

Fry is directed to a multimedia messaging system for use in a communication network where multimedia message delivery can be suspended upon receipt of a command by an application server from a mobile terminal. Although the message delivery has been suspended, the session may be continued. Once the message delivery is suspended, it is possible for the user to start downloading another message, start a call or the like. See paragraph 0011.

Applicant submits that the cited prior art, considered individually or in combination, fails to disclose a subscription server for cooperating with said central station to provide an initial portion of non-real time subscription

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data to users on respective mobile cellular communications devices via said at least one cellular base station when the determined available capacity thereof is greater than a low capacity threshold, and to thereafter provide a remaining portion of the non-real time subscription data to users on respective mobile cellular communications devices via said at least one cellular base station when the determined available capacity thereof is greater than a threshold greater than the low capacity threshold, as recited in the amended independent claims.

Accordingly, the independent claims are patentable over the prior art. In view of the patentability of the independent claims, it is submitted that their dependent claims, which recite yet further distinguishing features are also patentable over the prior art of record. Accordingly, these dependent claims require no further discussion therein.

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**III. Conclusion**

In view of the amendments presented above, it is submitted that all of the claims are patentable. Accordingly, a Notice of Allowance is respectfully requested in due course. If the Examiner determines any remaining informalities exist, he is encouraged to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,



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